



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2900 FAX (603) 271-2456



Rene LaPierre
230 West Milton Road
Farmington, NH 03835

ADMINISTRATIVE ORDER
No. WMD 00-029
November 17, 2000

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Rene LaPierre pursuant to RSA 147-A:14 and RSA 149-M:15. This Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 6 Hazen Drive, Concord, New Hampshire 03301. DES is responsible for regulating the management, transportation and disposal of hazardous and solid waste in New Hampshire pursuant to RSA 147-A and RSA 149-M and their implementing regulations, Env-Wm 100 to 1000 and Env-Wm 100 to 300 and 2100 to 3700, respectively.
2. Rene LaPierre is an individual having a mailing address of 230 West Milton Road, Farmington, NH 03835.

C. STATEMENT OF FACTS AND LAW

1. Rene LaPierre is the record owner of land at 30 West Milton Road, Farmington, NH, more particularly described in a deed recorded in the Strafford County Registry of Deeds at Book 771, page 61, and identified on the Farmington Tax Maps as Map R48, Lot 28 ("Site").
2. On September 16, 1999, the Farmington Police Department investigated a complaint alleging Mr. LaPierre was dumping oil and gas on the ground and illegally burning solid waste. According to the investigating officer's report, he observed the following items in the burn pile: twelve 275-gallon home heating tanks which contained fuel; an automobile; dozens of paint cans; plastic children's toys; bed mattresses; box springs; a propane tank; a pile of sheetrock; bundles of records that said RICCI Lumber on them; and a gas tank from an automobile.
3. On September 17, 1999, DES received a complaint from the Town of Farmington regarding unpermitted solid waste activities at the Site, as well as illegal burning at the Site.

4. On September 20, 1999, DES investigated the complaint by conducting an inspection ("September 1999 Inspection") of the Site. The purpose of the inspection was to determine Mr. LaPierre's compliance status relative to RSA 147-A and RSA 149-M and their implementing regulations, Env-Wm 100 to 1000 and Env-Wm 100 to 300 and 2100 to 3700, respectively.

5. During the September 1999 Inspection, DES personnel observed the following:

- a. One sealed, unlabeled 55-gallon drum with contents. Mr. LaPierre indicated that the drum contained used oil;
- b. One 5-gallon container with a spigot lying on its side. Mr. LaPierre indicated this container contained gasoline;
- c. Approximately 100 tires;
- d. Remnants of a burn pile, containing a large quantity of RICCI Lumber receipts, furniture, bed frames, and box springs;
- e. Two large scrap metal piles consisting of various types of metal, white goods, empty 55-gallon drums; and empty tanks; and
- f. A large pile of construction and demolition debris including cardboard.

6. As a result of the September 1999 Inspection, a Report of Initial Complaint Investigation was issued to Mr. LaPierre advising him to cease operating an unpermitted solid waste facility, cease transporting solid waste to an unpermitted facility, and by June 30, 2000, to label all used oil containers, and remove all solid waste including but not limited to scrap metals, white goods, tires, furniture, paper, and cardboard.

7. On November 23, 1999, DES conducted a follow-up inspection of the Site ("November 1999 Inspection"). During the November 1999 Inspection, DES personnel observed and learned the following:

- a. All of the tires and several loads of waste had been removed from the Site and brought to the Town of Farmington Transfer Station;
- b. The used oil was disposed of at the Town of Farmington Transfer Station;
- c. Approximately 60 tons of scrap metal and junk cars had been disposed of at Madbury Metals. Mr. LaPierre provided disposal receipts to DES; and
- d. No new waste had been accepted.

8. On June 21, 2000, DES conducted a follow-up inspection of the Site ("June 2000 Inspection"). During the June 2000 Inspection, DES personnel observed that the construction and demolition debris had been removed from the Site, as had a small amount of scrap metal. Several additional vehicles were present, as well as additional scrap metal, hot water heaters, a freezer, a stove, and three empty 275-gallon tanks.

9. On August 11, 2000, DES conducted a follow-up inspection of the Site ("August 2000 Inspection"). During the August 2000 Inspection, DES personnel observed a scrap metal pile that included but was not limited to items observed during the June 2000 Inspection, plus wheel rims, one empty 400-gallon tank, 4 commercial washing machines, a clothes dryer, freezer, a computer, lawn mowers, metal cabinets, refrigerators, two 20-pound propane tanks, metal chairs,

bicycles, metal pipe, a grill, a stove pipe, children's toy trucks, residential washing machines, and a go-cart. DES personnel also observed the remnants of a collapsed building. Mr. LaPierre was not present at the time of this inspection.

10. RSA 149-M:4, XXII defines "solid waste" as "any matter consisting of putrescible material, refuse, residue from an air pollution control facility, and other discarded or abandoned material."

11. RSA 149-M:4, XXI defines "refuse" in part, as "any waste product which is composed wholly or partly of such materials as brick, plaster or other waste resulting from the demolition, alteration, or construction of buildings or structures; or accumulated waste material, cans, containers, tires, junk, or other such substances which may become a nuisance."

12. Env-Wm 102.42 defines "construction and demolition debris" in part as "non-putrescible waste building materials and rubble which is solid waste resulting from the construction, remodeling, repair or demolition of structures or roads. The term includes but is not limited to, bricks, concrete and other masonry materials, wood, wall coverings, plaster, dry wall, plumbing, fixtures, non-asbestos insulation or roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals or other wastes and electrical wiring and components, incidental to any of the above and containing no hazardous liquid or metals. The term does not include asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, furniture, appliances, tires, drums and containers, and fuel tanks."

13. The furniture, bed frames, white goods, scrap metal, tires, and construction and demolition debris observed by DES at the Site during the September 1999 Inspection is solid waste as defined by RSA 149-M:4.

14. RSA 149-M:4, IX defines a "facility" as "a location, system, or physical structure for the collection, separation, storage, transfer, processing, treatment or disposal of solid waste."

15. The Site constitutes a "facility" as defined by RSA 149-M:4, IX.

16. Env-Wm 102.116 defines "owner" as "a person who owns a facility or part of a facility."

17. Rene LaPierre is the owner of a facility.

18. RSA 149-M:9, I states that "No person shall construct, operate or initiate closure of a public or private facility without first obtaining a permit from [DES]."

19. A review of DES files show that Mr. LaPierre has neither applied for nor holds a permit to operate a solid waste facility at any New Hampshire location.

20. RSA 149-M:9, II states that "No person shall transport solid waste to a facility other than a permitted facility."

21. During the September 1999 Inspection, Mr. LaPierre informed DES personnel that he cleans up "clutter" around peoples homes. The "clutter" consists of construction and demolition debris, white goods, scrap metal, tires, and plastic. Mr. LaPierre stated he then brings the "clutter" back to the Site and sorts it and then disposes of it.
22. Mr. LaPierre transported solid waste, specifically scrap tires, construction and demolition debris, white goods, scrap metal, and cardboard, to an unpermitted solid waste facility.
23. Env-Wm 807.06(b)(4) requires generators to mark containers of used oil destined for recycling with the words "Used Oil for Recycle".
24. The 55-gallon drum observed by DES personnel during the September 1999 Inspection was not labeled.
25. Env-Wm 807.07(b) requires used oil to be transported using a three-part bill of lading.
26. During the September 1999 Inspection, Mr. LaPierre informed DES personnel that he accepts junk vehicles with automotive fluids in them. He then removes the fluids and the tires. He reuses the gasoline and antifreeze in his vehicles. The used oil is placed in 55-gallon drums and transported to Don Buick of B&B Fabrication on Route 11, Farmington, NH.
27. At the time of the November 1999 Inspection, Mr. LaPierre informed DES personnel that he transported the used oil to the Town of Farmington Transfer Station.
28. Mr. LaPierre stated he had not used a Bill of Lading in transporting used oil off site.

D. DETERMINATION AND NOTICE OF VIOLATION

1. Rene LaPierre has violated RSA 149-M:9, I by operating a solid waste facility without first obtaining a permit.
2. Rene LaPierre has violated RSA 149-M:9, II by transporting solid waste to an unpermitted solid waste facility.
3. Rene LaPierre has violated Env-wm 807.06(b)(4) by failing to properly mark containers of used oil with the words "Used Oil for Recycle."
5. Rene LaPierre has violated Env-Wm 807.07(b) by failing to use a bill of lading in transporting used oil.

E. ORDER

Based on the above findings, the Department of Environmental Services hereby orders Rene LaPierre as follows:

1. **Immediately** cease accepting or bringing any solid waste to the Site.

2. **Within 15 days** of this Order, submit to DES for approval a Scope of Work for the removal of all solid waste at the Site. Include as part of the Scope of Work a schedule which details when the work will be done and the name of the solid waste facility to which the wastes will be taken.
3. Upon DES approval of the Scope of Work and proposed schedule, implement the Scope of Work as approved and complete the removal of all solid waste at the Site to a facility or facilities permitted to accept such wastes.
4. Dispose of all solid waste **within 60 days** of DES approval of the Scope of Work.
5. Submit one written status report to DES **within 7 calendar days** of the disposal of the solid waste, certifying that corrective measures have been implemented in accordance with the approved Scope of Work and compliance achieved. Include the report supporting documentation describing those measures taken to achieve compliance during the reporting period, copies of any disposal receipts, written plans or proceedings developed.

Please address correspondence to:

Kenneth W. Marschner, Administrator
DES, WMD
6 Hazen Drive
Concord, New Hampshire 03301

F. APPEAL

If you are aggrieved by this Order, you may appeal this decision to the Waste Management Council. Such an appeal must be made to the Council within thirty (30) days of issuance of this Order in accordance with Env-WMC 200. Such an appeal must be addressed to Chairman, Waste Management Council, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095. Appealing the Order does not automatically relieve you of your obligation to comply with the Order.

G. OTHER PROVISIONS

This Order is being recorded in the Strafford County Registry of Deeds so as to run with the land.

Please note that RSA 147-A and RSA 149-M provide for civil and criminal penalties and administrative fines for violations of the statutes or any rule adopted by DES relative to the statute, as well as for violations of this Order. RSA 147-A:14 and RSA 149-M:15 provide for civil forfeitures of up to \$50,000 and \$25,000 respectively for each day of a continuing violation, in addition to enforcement by injunctive relief. In the event that compliance is not achieved, DES may take further action against you by referring the matter to the New Hampshire Department of Justice for imposition of civil or criminal penalties. Please be advised that DES reserves the right to pursue administrative penalties for the violations noted above.

DES personnel will continue to monitor Mr. LaPierre's compliance status and will take appropriate action should additional violations be documented. As additional information becomes available, DES may issue further directives regarding the management and disposal of wastes on the Site and the assessment and remediation of environmental impacts resulting from waste management activities practiced at the Site. Mr. LaPierre remains obligated to comply with all applicable requirements, in particular RSA 147-A and RSA 149-M and its implementing regulations, Env-Wm 100 to 1000 and Env-Wm 100 to 300 and 2100 to 3700, respectively.

COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division
Department of Environmental Services

COPY

Robert W. Varney, Commissioner
Department of Environmental Services

CERTIFIED MAIL/RR # 7099 3400 00002 9770 0126

cc: DB/FILE/ORDER
Gretchen Rule, Enforcement Coordinator, DES
Public Information Coordinator, DES
Paul Sanborn, ARD
Michael Walls, Sr. Assistant Attorney General
Town Clerk, Farmington, NH

Enclosures: Administrative Order Fact Sheet CO-7